

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MILAGROS LOPEZ,

08 CV 1871 (DGT) (VVP)

Plaintiff,

- against -

P.O. MICHAEL H. JOSHUA, Tax Registry  
No. 4856,

Defendant.  
-----X

PLAINTIFF'S MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF'S OBJECTIONS  
TO DEFENDANT'S BILL OF COSTS

PRELIMINARY STATEMENT

Plaintiff, MILAGROS LOPEZ, submits this memorandum of law in support of her objections to defendant, MICHAEL H. JOSHUA's, bill of costs in this action.

ARGUMENT

Plaintiff's chief argument, as expressed in the accompanying objections, is that the court has already determined that defendant is not to have his costs in this action. Fed. R. Civ. P. 54(d) states, in pertinent part, that "[u]nless...a court order provides otherwise, costs...should be allowed to the prevailing party." As plaintiff points out in her objections to defendant's bill of costs, this court ordered that defendant not receive its costs in this action. Thus, its order does indeed provide "otherwise."

However, should it be determined that defendant is entitled to costs herein, plaintiff points out that she should not be required to pay the costs because they would work a great economic hardship on her. In Whitfield v. Scully, 241 F. 3d 264 (2d Cir.

2001), the court stated, at 270, that "costs may be denied because of...the losing party's limited financial resources."

This court is asked to exercise its discretion in denying costs to defendant because of plaintiff's parlous financial situation. As she points out in her affidavit in support of her objections, accompanied by one month's worth of check stubs, her gross monthly income does not even equal the amount of costs that defendant seeks from her. Her income is low enough for her to receive food stamps for herself and her family. Therefore, this court is respectfully urged to exercise its discretion and to deny defendant's bill of costs.

CONCLUSION

For either of the reasons enumerated hereinabove, this court should deny defendant payment of his bill of costs.

Dated: Kew Gardens, New York  
May 17, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan D. Levine", written over a horizontal line.

ALAN D. LEVINE, ESQ.  
Attorney for Plaintiff  
80-02 Kew Gardens Road, Suite 302  
Kew Gardens, New York 11415  
(718) 793-6363  
Our File No: 2040

TO: MICHAEL A. CARDOZO, ESQ.  
Corporation Counsel  
100 Church Street  
New York, NY 10007  
(212) 788-9580

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MILAGROS LOPEZ,

Plaintiff,

08 CV 1871 (DGT) (VVP)

-against-

AFFIDAVIT OF  
SERVICE BY MAIL

P.O. MICHAEL H. JOSHUA, Tax Registry  
No. 4856,

Defendant.  
-----X

STATE OF NEW YORK            )  
  )ss:  
COUNTY OF QUEENS            )

JENNIFER L. BROSIUS, being duly sworn, deposes and says:

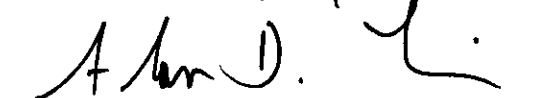
Deponent is not a party to this action, is over 18 years of age, and resides in the County of Queens, City and State of New York.

On May 17, 2010, deponent served the within PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OBJECTIONS TO DEFENDANT'S BILL OF COSTS upon the below named attorney, at the address designated by said attorney for that purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

MICHAEL A. CARDOZO, ESQ.  
Corporation Counsel  
100 Church Street  
New York, New York 10007

  
JENNIFER L. BROSIUS

Sworn to before me this  
17<sup>th</sup> day of May 2010

  
\_\_\_\_\_  
NOTARY PUBLIC

ALAN D. LEVINE  
Notary Public, State of New York  
No. 31-4736230  
Qualified in New York County  
Commission Expires July 31, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MILAGROS LOPEZ,

08 CV 1871 (DGT) (VVP)

Plaintiff,

- against -

P.O. MICHAEL H. JOSHUA, Tax Registry  
No. 4856,

OBJECTIONS TO  
DEFENDANT'S  
BILL OF COSTS

Defendant.  
-----X

Plaintiff, MILAGROS LOPEZ, by her attorney ALAN D. LEVINE, hereby submits the following objections to defendant's bill of costs:

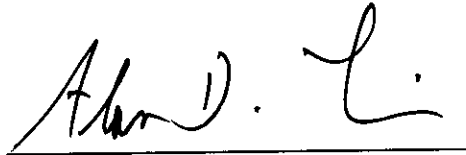
1. Defendant is not entitled to costs in this action. Annexed hereto as Exhibit "A" is a copy of the judgment in this action, signed by the clerk of this court. On that judgment, it is clearly stated that the court has ordered that the plaintiff recover nothing and that the action be dismissed on the merits. However, the pre-printed statement that the defendant recover costs from the plaintiff has been crossed out. Consequently, it is clear that, following the jury's verdict, this court ordered only that the plaintiff not recover anything and that the action be dismissed. The court specifically performed an act that has the effect of denying defendant his costs. Therefore, defendant's bill of costs must be rejected.

2. Even if this court were to somehow determine that the defendant is entitled to costs, he still should not have them. For, as plaintiff makes clear in her annexed affidavit and the exhibit annexed thereto, forcing her to pay the costs would

work a great economic hardship on her. As plaintiff's accompanying memorandum of law makes clear, there is precedent for denying the payment of costs on such grounds.

WHEREFORE, plaintiff's objections should be upheld and defendant should not have his costs in this action.

Dated: Kew Gardens, New York  
May 17, 2010

A handwritten signature in black ink, appearing to read "Alan D. Levine", written over a horizontal line.

ALAN D. LEVINE, ESQ.  
Attorney for Plaintiff  
80-02 Kew Gardens Road  
Suite 302  
Kew Gardens, New York 11415  
(718) 793-6363  
Our File No. 2040

TO: MICHAEL A. CARDOZO  
Corporation Counsel  
Attorney for Defendant  
100 Church Street  
New York, New York 10007  
(212) 788-9580

AO 450 (Rev. 01/09) Judgment in a Civil Action

UNITED STATES DISTRICT COURT  
for the  
Eastern District of New York

\_\_\_\_\_  
Milagros Lopez )  
Plaintiff )  
v. ) Civil Action No. 08-cv-1871  
\_\_\_\_\_  
Michael H. Joshua )  
Defendant )

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

- ☐ the plaintiff (name) \_\_\_\_\_ recover from the  
defendant (name) \_\_\_\_\_ the amount of  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_), which includes prejudgment  
interest at the rate of \_\_\_\_\_ %, plus postjudgment interest at the rate of \_\_\_\_\_ %, along with costs.
- ☒ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) \_\_\_\_\_  
\_\_\_\_\_ recover costs from the plaintiff (name) \_\_\_\_\_  
\_\_\_\_\_.
- ☐ other: \_\_\_\_\_

This action was (check one):

- ☒ tried by a jury with Judge Trager \_\_\_\_\_ presiding, and the jury has  
rendered a verdict.
- ☐ tried by Judge \_\_\_\_\_ without a jury and the above decision  
was reached.
- ☐ decided by Judge \_\_\_\_\_ on a motion for

Date: \_\_\_\_\_

4/13/10

CLERK OF COURT



Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MILAGROS LOPEZ,

Plaintiff,

- against -

08 CV 1871 (DGT) (VVP)

P.O. MICHAEL H. JOSHUA, Tax Registry  
No. 4856,

AFFIDAVIT


Defendant.  
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STATE OF NEW YORK        )  
                                  ss.:  
COUNTY OF QUEENS        )

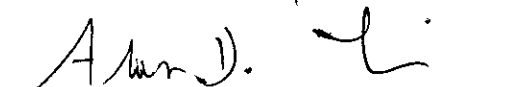
MILAGROS LOPEZ, being duly sworn, deposes and says:

1. I was the plaintiff in the above-referenced action. I make this affidavit in support of my objections to defendant's attempt to collect its costs in the action.
2. Defendant seeks to collect the sum of \$2,200.93 from me. This amount exceeds my gross monthly income, which is \$2,160.00. I have annexed hereto as Exhibit "A" copies of pay stubs reflecting my gross monthly income as an independent contractor. My net income after payment of taxes is smaller. I am also a recipient of food stamps.
3. It should be clear from the above that having to pay defendant's bill of costs would work a great hardship on me. Therefore, I am asking this Court to rule that I am not obligated to do so.

WHEREFORE, plaintiff should be relieved of any obligation she may have to pay defendant's costs in this action.

  
MILAGROS LOPEZ

Sworn to before me this  
14th day of May 2010

  
NOTARY PUBLIC ALAN D. LEVINE  
Notary Public, State of New York  
No. 31-4736230  
Qualified in New York County  
Commission Expires July 31, 2013

DATE:03/26/2010 CK#:910 TOTAL:\$360.00\*\*\*\*\* BANK:Operating Account(203k)  
 PAYEE:Milagros Lopez(milagros)

Property Account	Invoice - Date	Description	Amount
wb203k 5312-0000	april - 03/26/2010		360.00
			<hr/> 360.00

COMMUNITY IMPROVEMENT CORPORATION

313

<u>Ln#</u>	<u>Description</u>	<u>Invoice</u>	<u>Amount</u>
1	MARCH 2010-217 WYCKOFF AVE		1,200.00
2	MARCH 2010-217 WYCKOFF AVE		-90.00

RIDGWOOD BUSHWICK SENIOR CITIZENS COUNCIL, INC.  
 AVENUE NYC 09/10

107

<u>Ln#</u>	<u>Description</u>	<u>Invoice</u>	<u>Amount</u>
1	MARCH 2010-184 WYCKOFF AVE		240.00

"A"



UNITED STATES DISTRICT COURT  
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Plaintiff,

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AFFIDAVIT OF  
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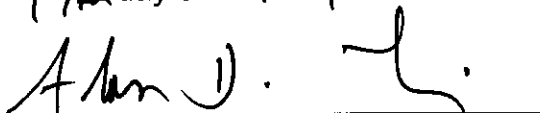
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On May 17, 2010, deponent served the within OBJECTIONS TO DEFENDANT'S BILL OF COSTS upon the below named attorney, at the address designated by said attorney for that purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

MICHAEL A. CARDOZO, ESQ.  
Corporation Counsel  
100 Church Street  
New York, New York 10007

  
JENNIFER L. BROSIUS

Sworn to before me this  
17<sup>th</sup> day of MAY 2010

  
NOTARY PUBLIC

ALAN D. LEVINE  
Notary Public, State of New York  
No. 31-4736230  
Qualified in New York County  
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